

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 06-15161

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
April 30, 2008
THOMAS K. KAHN
CLERK

D. C. Docket No. 04-00014 CV-5-SPM

DAVID BEVERLY,

Petitioner-Appellant,

versus

JACK SAPP, Warden,
BILL MCCOLLUM, The Attorney General for
the State of Florida,
AKR FLORIDA PAROLE COMMISSION,

Respondents-Appellees.

Appeal from the United States District Court
for the Northern District of Florida

(April 30, 2008)

Before BIRCH, DUBINA and HILL, Circuit Judges.

PER CURIAM:

Petitioner David Beverly appeals the district court's order denying him habeas relief under 28 U.S.C. § 2254.

After reviewing the record, reading the parties' briefs, and having the benefit of oral argument, we conclude that we must vacate the district court's order and remand this case for further proceedings.

In *Gagnon v. Scarpelli*, 411 U.S. 778, 790, 935 S. Ct. 1756 (1973), the Supreme Court stated that "counsel should be provided in cases where, after being informed of his right to request counsel, the probationer or parolee makes such a request based on a timely and colorable claim (i) that he has not committed the alleged violation of the conditions upon which he is at liberty. . . ." The record here demonstrates that Beverly's request for the appointment of counsel was timely; however, neither the hearing officer nor the district court addressed the colorability of Beverly's claim that he did not commit the alleged violations of the conditions upon which he was at liberty. Consequently, we are unable to adequately review Beverly's claim as a result of the incomplete record. Accordingly, we vacate the district court's order and remand this case for further proceedings consistent with this opinion.

VACATED and REMANDED.